

STATE WATER RESOURCES CONTROL BOARD



2003 OCT -8 AM 8:37

DIVISION OF WATER RIGHTS SACRAMENTO

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southwest Region
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DIVISION OF WATER RIGHTS SACRAMENTO

F/SWR:MC

Mr. Andrew Fecko
Division of Water Rights
State Water Resources Control Board
1001 "I" Street, Second Floor
Sacramento, California 95812

Dear Mr. Fecko:

The National Marine Fisheries (NOAA Fisheries) would like to provide the following comments on the Draft Environmental Impact Report (EIR) for Consideration of Modifications to the U.S. Bureau of Reclamation's (BOR) Water Right Permits 11308 and 11310 To Protect Public Trust Values and Downstream Water Rights on the Santa Ynez River Below Bradbury Dam.

Introduction

On August 11, 1997, NOAA Fisheries listed the Southern California steelhead Evolutionarily Significant Unit (ESU), which includes steelhead found in the Santa Ynez River system, as an endangered species under the Federal Endangered Species Act (ESA). The Southern California steelhead ESU was listed as an endangered species because of the destruction and loss of habitat throughout its range that has caused the annual run size in the ESU to decline from historic estimates of 55,000 fish to less than 500 fish, a decline of more than 90%.

Steelhead that are part of the endangered Southern California steelhead ESU presently occur in the Santa Ynez River mainstem and tributaries downstream of Bradbury Dam. Prior to construction of the Cachuma Project in 1958, which included Bradbury Dam, the Santa Ynez River system supported one of the largest runs of steelhead in southern California, estimated by the California Department of Fish and Game to be approximately 20,000 adult fish per year. A majority of these fish are believed to have spawned and reared in the up-stream tributaries to the Santa Ynez River, above the current site of the Bradbury Dam, within the Los Padres National Forest. The current run of adult steelhead in the Santa Ynez River system is believed to be less than 100 adult fish per year, and is limited to the mainstem and tributaries of the Santa Ynez River below Bradbury Dam.

In September 2000, NOAA Fisheries issued a Biological Opinion to the BOR which addressed the affects of the operation and maintenance of the Cachuma Project (including Bradbury Dam) on the remnant steelhead in the lower Santa Ynez River. Additionally, NOAA Fisheries is in the



process of initiating recovery planning for the Southern California steelhead ESU. The State Water Resources Control Board's (SWRCB) hearing and related EIR for the operation and maintenance of the Cachuma Project has the potential to affect both of these NOAA Fisheries efforts to protect and restore the steelhead resources on the Santa Ynez River.

EIR Scope and Alternatives Analysis

The original Notice of the Water Rights Hearing for the Cachuma Project (September 25, 2000) indicates that the basic purpose of the hearing is to review BOR's Water Rights Permits 11308 and 11310 to determine whether any modifications in permit terms and conditions are necessary to protect the Public Trust values and downstream water rights on the Santa Ynez River below Bradbury Dam. In a subsequent ruling on the scope of the Water Rights Hearing for the Cachuma Project (May 29, 2003) the Hearing Officer Peter S. Silva clarified the scope of the Public Trust Resources which would be addressed in this hearing. Specifically, the SWRCB advised NOAA Fisheries and other parties to the hearing that: "By its terms, the key hearing issue 4b is not limited to public trust resources below Bradbury Dam, or to requirements that apply below Bradbury Dam. Consistent with the hearing notice, I intend to allow parties to present evidence concerning whether Reclamation's permits should be modified to address any impact of Cachuma Project operations to public trust resources above Bradbury Dam, including evidence concerning requirements that would apply above the dam." (See letters from Peter S. Silva, State Water Resources Control Board to NOAA Fisheries and parties, May 29, 2003 and August 13, 2002.)

The Draft EIR indicates that the project consists of potential modifications of the BOR's existing water right permits to protect downstream water rights and Public Trust resources on the Santa Ynez River. As noted above, the SWRCB has established that the scope of the Public Trust interests in the steelhead resources of the Santa Ynez River include resources above as well as below Bradbury Dam. However, none of the potential modifications (or project alternatives) in the Draft EIR include provisions which specifically address Public Trust interests in the steelhead resources of the Santa Ynez River above Bradbury Dam. As such, the alternatives analyzed in the EIR are not adequate to address fully the issues raised by the project.

Because the range of alternatives addressed and evaluated as part of the Draft EIR relate to both the Biological Opinion NOAA Fisheries issued for the Cachuma Project and recovery of steelhead, as well as the Public Trust values in the Santa Ynez River, the scope of alternatives is an important element of the Cachuma Project Water Rights Hearing. In a letter dated December 11, 2000 to the BOR, the SWRCB indicated that the Board staff had determined that the range of alternatives for the EIR should be revised to reflect the Biological Opinion issued by NOAA Fisheries for the Cachuma Project. Because the alternatives in the Draft EIR are based on the actions proposed by the BOR and evaluated in NOAA Fisheries' Biological Opinion addressing Cachuma Project operations, they do not address the larger issue of how the Santa Ynez River steelhead contributes to recovery of the Southern California steelhead ESU (See additional comments below regarding the nature and scope of the Biological Opinion.)

To address the recovery of steelhead resources of the Santa Ynez River and in the Southern California steelhead ESU as a whole, the project alternatives should specifically include fish passage provisions for both adult and juvenile steelhead around Bradbury Dam, and protection of steelhead spawning and rearing habitat above Bradbury Dam. To analyze these alternatives NOAA Fisheries recommends the following six steelhead investigation be undertaken and incorporated into the Final EIR and the SWRCB deliberations before making any final decision on the Public Trust interests in the steelhead resources of the Santa Ynez River:

1. Steelhead Spawning and Rearing Habitat Assessment

Conduct a steelhead spawning and rearing habitat assessment of the following segments of the Santa Ynez River system to systematically document and evaluate the extent and quality of the steelhead habitat above Bradbury Dam which would become accessible to adult steelhead if fish passage and migration were re-established in the upper reaches of the Santa Ynez River watershed: (a) mainstem of Santa Ynez River between Bradbury Dam and Gibraltar Dam; (b) the following tributaries to the Santa Ynez River between Bradbury and Gibraltar Dam: Cachuma Creek, Santa Cruz Creek, Bear Creek, Tequepis Creek, Horse Canyon, Hot Springs Creek, Beach Creek, Los Laureles, Canyon, Red Rock Canyon, Lewis Canyon, Arroyo Burro Creek, and Devils Creek.

This assessment should use standard, acceptable fish habitat assessment protocols such as Habitat Suitability Index (HSI) and be prepared by an independent consultant, under the auspices of the SWRCB, subject to technical review by the regulatory and trustee agencies (e.g., SWRCB, California Department of Fish and Game, BOR, U.S. Forest Service, and NOAA Fisheries.)

2. Fish Passage Investigation for Bradbury Dam and Cachuma Reservoir

To provide a thorough and defensible analysis and evaluation of a full range of alternative fish passage opportunities at Bradbury Dam and Cachuma Reservoir, conduct an investigation of alternative means of providing adult steelhead fish passage to spawning and rearing habitat above Bradbury Dam, and effective emigration of rearing juvenile steelhead (smolts) located above Bradbury Dam downstream to the ocean. This investigation should aim at identifying effective means of reconnecting the upper portion of the Santa Ynez River watershed with the lower Santa Ynez River and the Pacific Ocean. Emphasis should be placed on restoring, to the maximum extent practical, the natural pattern of migration and emigration of fish between the ocean and upstream spawning and rearing areas, but the investigations should encompass a full range of passage options. Additionally, screening of diversions through the Tecolote Tunnel and other water intakes should be investigated in conjunction with the fish passage investigation.

This investigation should be based upon stream flow and fish passage (including fish screening) criteria established by NOAA Fisheries and the California Department of Fish and Game, and be prepared by an independent consultant, under the auspices of the SWRCB, subject to technical review by the regulatory and trustee agencies (e.g., SWRCB, California Department of Fish and Game, BOR, U.S. Forest Service, and NOAA Fisheries.)

Because of the complexity of this issue, a special technical advisory group should be established to determine the scope of the fish passage (and screening) alternatives to be investigated for the dam and reservoir, and to direct the investigations; this technical advisory group should be comprised of representatives of the NOAA Fisheries, BOR, U.S. Forest Service, and California Department of Fish and Game.

3. Fish Flows to Support Migration, Spawning and Rearing above Bradbury Dam

Identify instream flow requirements (timing, duration, and magnitude) in the mainstem of the Santa Ynez River which would be necessary to provide effective fish migration for both adult and juvenile steelhead between the Pacific Ocean and the reach of the Santa Ynez River between Bradbury Dam and Gibraltar Dam. Additionally, identify the flows necessary to support spawning and rearing in the mainstem reach of the Santa Ynez River between Bradbury and Gibraltar Dams.

These investigations should use standard, acceptable instream flow protocols such as Incremental Flow Instream Methodology (IFIM), and be based upon fish passage criteria established by the California Department of Fish and Game and the NOAA Fisheries. These instream flow investigations should be prepared by an independent consultant under the auspices of the SWRCB, subject to technical review by the regulatory and trustee agencies (e.g., SWRCB, California Department of Fish and Game, BOR, U.S. Forest Service, and NOAA Fisheries.)

4. Channel Forming Flows in the Lower Mainstem Santa Ynez River

To determine if there are ways of improving migratory conditions for both adult and juvenile steelhead in the lower Santa Ynez River by improving and maintaining natural channel structure generated by fluvial processes, evaluate the effects on channel formation in the lower Santa Ynez River (with particular reference to effects on steelhead migration and fish habitat characteristics), resulting from the alteration of the natural frequency, duration, and magnitude of pre-project flood flows, created by the current operation of the Cachuma Project. This flow study should be prepared by an independent consultant under the auspices of the SWRCB, subject to technical review by the regulatory and trustee agencies (i.e., SWRCB, California Department of Fish and Game, BOR, and NOAA Fisheries.)

5. Alternative Flow Regime for Lower Mainstem Santa Ynez River

Analyze and evaluate the 3A2 alternative flow regime (and variations) identified in the Cachuma Contract Final Environmental Impact Report (December 1995) to determine its suitability to meet the Public Trust interests in the steelhead resources of the Santa Ynez River below Bradbury Dam, and the related goal of steelhead recovery (in addition to avoidance of jeopardy) in the Santa Ynez River. This evaluation should utilize standard, accepted instream flow methodology such as the Incremental Flow Instream Methodology (IFIM) and be prepared by an independent consultant under the auspices of the SWRCB, subject to technical review by the regulatory and trustee agencies (e.g., SWRCB, California Department of Fish and Game, BOR, and NOAA Fisheries.)

6. Watershed Analysis

Identify and evaluate anthropogenic activities within the watershed (e.g., roads, vegetation clearing or modification, fire management, grazing, recreational activities, etc.) affecting the quantity and quality of steelhead spawning and rearing habitat above Bradbury Dam in both the mainstem of the Santa Ynez River, and the major historic steelhead spawning and rearing tributaries (e.g., Gridley Creek, Camuesa Creek, Indian Creek, Mono Creek, Blue Canyon, Agua Caliente Creek, North Fork Juncal Creek, Alder Creek, Juncal Creek). This investigation and analysis should be prepared by an independent consultant under the auspices of the SWRCB, subject to review by the regulatory and trustee agencies (e.g., SWRCB, California Department of Fish and Game, BOR, U.S. Forest Service, and NOAA Fisheries.)

This investigation is intended principally to address water quality issues (e.g., elevated turbidity, nutrient levels, etc.) which are an integral part of the Public Trust responsibilities of the SWRCB, and have a direct bearing on the productivity of steelhead and spawning and rearing habitats and are necessary to assure that the benefits of restoring steelhead passage and related flows are more fully realized.

Biological Opinion for the Cachuma Project

The Draft EIR includes an extended discussion of the Biological Opinion NOAA Fisheries issued to the BOR on September 8, 2000, for its proposed operation and maintenance of the Cachuma Project. The Biological Opinion concluded that the proposed operation and maintenance of the Cachuma Project was not likely to jeopardize the continued existence of the endangered Southern California steelhead ESU, but that it was expected to result in some incidental take of listed steelhead. Because incidental take was anticipated, an incidental take statement was issued with the Biological Opinion that includes a number of mandatory reasonable and prudent measures, as well as terms and conditions, that BOR must comply with to minimize and monitor any incidental take of steelhead (e.g., modifications to downstream water releases, provision of the Hilton Creek Water Supply Line, modification to current low flow crossing maintenance activities, and passage and habitat improvements to spawning tributaries downstream of Bradbury Dam such as Salsipuedes, El Jaro and Hilton Creeks, etc.).

As part of the Biological Opinion, NOAA Fisheries provided BOR with set of specific Conservation Recommendations designed to further minimize or avoid impacts on steelhead and also assist with recovery planning and implementation. Although BOR is not required to implement these Conservation Recommendations, section 7(a)(1) of the ESA directs Federal agencies such as BOR to utilize their authorities to further the purposes of the ESA by carrying out conservation programs for the benefit of endangered and threatened species. NOAA Fisheries provided these Conservation Recommendations to BOR in light of this broader Federal agency obligation under the ESA.

Although these Conservation Recommendations are advisory and carry no binding legal force, NOAA Fisheries believes the implementation of these additional measures is important because they will either help to minimize the adverse effects of the Cachuma Project (i.e., incidental take of steelhead), or provide information necessary for the development of a recovery plan for the Southern California steelhead ESU. These advisory Conservation Recommendations include: (1) examination of alternative means of delivering water to downstream users of the Cachuma Project, (2) examination and evaluation of the means of providing passage for steelhead to and from the historic steelhead spawning and rearing habitat above Bradbury Dam, and (3) examination and evaluation of the ecological effects of reducing natural flood flows in the lower Santa Ynez River as a result of the operation of the Cachuma Project. The six steelhead investigations outlined above are based upon these advisory Conservation Recommendations, but provide more specificity for the purposes of meeting the SWRCB's Public Trust responsibilities and the requirements of the California Environmental Quality Act.

Finally, we would like to emphasize that NOAA Fisheries' Biological Opinion for the Cachuma Project did not address the specific requirements for recovery of steelhead in the Southern California ESU as a whole or the Santa Ynez River system in particular. Rather, the Biological Opinion focused on determining whether or not the operation and maintenance of the Cachuma Project, as proposed by the BOR, would jeopardize the continued existence of the Southern California steelhead ESU. Although NOAA Fisheries's recovery planning efforts for this ESU are only now beginning, timely implementation of these Conservation Recommendations (as further described in the six steelhead investigations outlined above) will facilitate the development of potential operation and maintenance alternatives for the Cachuma Project that further protect Public Trust values and contribute towards the recovery of the endangered Southern California steelhead ESU.

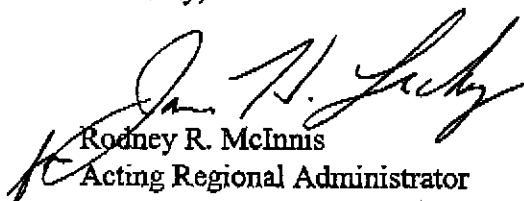
Summary

The Board's Water Rights Hearing on the Cachuma Project raises issues central not only to the general Public Trust interest in the water resources of the Santa Ynez River system, but also to the protection and recovery of the endangered Southern California steelhead ESU. Any decision on the disposition of the water rights and Public Trust values in the Santa Ynez River should, therefore, be made in a manner which does not prejudice the NOAA Fisheries recovery planning process for the larger Southern California steelhead ESU.

Because the Board's consideration and possible decision on this matter is likely to precede the completion of NOAA Fisheries's recovery plan for the Southern California steelhead ESU, NOAA Fisheries recommends that any water rights decision made prior to the completion and adoption of this recovery plan be interim in nature. Further, any interim decision should also include specific conditions providing for continuing evaluation of the effects of the Cachuma Project on the recovery of the Southern California ESU, including implementation of the investigative Conservation Recommendations set forth in the Biological Opinion for the Cachuma Project, and as outlined in the six steelhead investigations described above.

Thank you for the opportunity to provide these preliminary comments on the Draft EIR addressing the effects of the Cachuma Project water rights hearing. Should you or your staff have any questions regarding these comments or wish to discuss these issues further, please feel free to contact either Jim Lecky at (562) 980-4015 or Craig Wingert at (562) 980-4021

Sincerely,



Rodney R. McInnis
Acting Regional Administrator

cc:

Kirk Rogers, Acting Regional Director, U.S. Bureau of Reclamation
Jeanine Derby, Forest Supervisor, Los Padres National Forest
Arthur G. Baggette, Chairperson, State Water Resources Control Board
Robert Hight, Director, California Department of Fish and Game
Mike Higgins, Regional Water Control Board, Central Coast Region
Charles Raysbrook, Regional Director, Region 5, California Department of Fish & Game
Arthur Kidman, Cachuma Conservation and Release Board
Robert Wignot, Cachuma Operation and Maintenance Board
Michael Jackson, Chairperson, Santa Ynez River Technical Advisory Committee
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